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## **Transnational divorce: migrant Filipinas in the Netherlands and the Philippine family law**

### **Abstract**

Family laws regulate the marriages, family lives, and conjugal separation of many citizens, which in the case of migrants may grant to some of these laws cross-border power. To find out the extent of this power and how it affects the lives of migrants in “mixed” couples, the present study examines the (post-)divorce experiences of migrant Filipinas in the Netherlands, a particularly heuristic case since divorce is largely impossible in the Philippines. Semi-structured interviews unveil that despite their long residence in their receiving society and their acquisition of the Dutch nationality, migrant Filipinas are still subjected to the governmentality of their country of origin. Three stories presented here highlight the intertwined institutions of marriage and of divorce as well as the intersecting legal and religious realms of marriage and the family. Influenced by the Philippine family law, the interactions of these institutions and realms result in differing civil statuses “here” and “there” and in various challenges, particularly regarding marriage ties dissolution, property acquisition, and re-marriage. These findings contribute to the conceptualization of transnational divorce in the present age of global migration.

### **Keywords**

transnational divorce, “mixed” couples, Philippine family law, migrant Filipinas

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### **Word count**

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## Introduction

In an appeal filed to the Supreme Court of the Philippines, a former Filipino citizen requested the court to “review on certiorari<sup>1</sup>” the decision of a Regional Trial Court of the country regarding his “petition for judicial recognition” of his divorce obtained abroad “and/or declaration of [his Philippines-solemnized] marriage [with a Filipino citizen] as dissolved” (*Corpuz vs. Tirol Sto. Tomas and the Solicitor General*: G.R. No. 186571, 11 August 2010). Basing itself on the 1987 Family Code of the Philippines, the Regional Trial Court denied this man’s petition on the ground that he was no longer a Filipino citizen and therefore was not the “proper” person “to institute the action for judicial recognition” of his overseas divorce but rather his Filipino (ex-)spouse. This decision made it extremely difficult for the petitioner to remarry in the country his new partner of Filipino origin and nationality. On 10 August 2010, the Supreme Court granted his request, reversed the lower court’s decision, and ordered the return of his case to the trial court, which signalled the start of another long legal battle.

As of 2017, Philippines is one of the only two states in the world where divorce remains largely impossible (the second state being the Vatican). This rift between the family law of the Philippines and those of other countries has far-reaching consequences for Filipino migrants who get married and/or divorced abroad, which present an interesting case in which the family law of one country have unexpected cross-border power. The scholarly literature on divorce highlights the causes and consequences of ruptured relationships on family members, particularly on children, as well as the complex legal process involved (e.g. Allen and Brinig 1998; Emery 2012; Uunk 2004; Wallerstein and Kelly 2008; Wallerstein and Tanke 1996). However, most of these studies focus on partners with the same national belonging, thereby overlooking the experiences of “other” unions including “mixed” couples in which partners have “different nationalities and/or ethnicities” (de Hart et al. 2013: 995). When partners in these couples originate from countries with dissimilar family laws, it appears likely that their break-up and its aftereffects reach beyond the borders of their society of residence. If the divorce takes place in the country of one partner, how does the family law in the origin country of the other partner shape his/her (post-)divorce experiences?

To address this question, this paper adopts a transnational approach that pays attention to the way the process of conjugal breakdown unfolds across the borders of nation-states. Its focus on the “transnational” is based on migration scholars’ observation that migrants maintain, construct and reinforce multiple social relations connecting their countries of origin and of destination through time (Basch et al. 1995; Vertovec 2009). Given that many migrant spouses in mixed couples maintain links with their society of origin (Bélanger et al. 2011; Author; Yeoh et al. 2013), a transnational lens is useful to capture the cross-border aspects of their divorce (see Constable 2003; Sportel 2016). This requires taking into account the legal specificities of the country of origin of the migrant partner as they may interfere during or after the dissolution of marriage, which grants a transnational character to the divorce of mixed couple. In the field of socio-legal studies, the term “transnational divorce” has been used to describe divorce with extra-judicial dimension (such as *talaq* among Muslim couples) linking two or more countries (Forsyth 1985; Sportel 2016; Qureshi 2017), as well as divorce in which the legal proceedings occur in a country outside of that where the marriage was solemnized and/or where the partners reside (Benavides 2008; Groves 1935). It involves partners separated by migration (Caarls and Mazzucatto 2015), those who belong to migrant/diasporic communities (Liversage 2013; Mand 2005), and mixed couples. In the present study, transnational divorce refers to legal marriage dissolution in which the process and after-effects go beyond the national borders of the country where it starts.

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<sup>1</sup> *Certiorari* refers to the order of a high court to a lower court to transmit the documents of a case that it will review (see Law and Martin 2014).

To contribute to the conceptualization of such divorce, I investigate in this paper the cross-border power of the Philippine family law through a case study of transnational divorces involving Filipino migrant women in the Netherlands. The perspectives of these women are enlightening for three reasons. Firstly, divorce is largely not allowed in their natal country (the Philippines), an unusual legal situation in the world today. The implications of this extend to Filipino migrants living abroad who possess Philippine nationality and who are expected to register in the Philippines their marriage regardless of the country where it was solemnized. If they do so, their marriage becomes subjected to the country's family law, and its breakdown in the form of divorce necessitates judicial recognition in the Philippines. According to recent social surveys, more and more Filipinos support that divorce be authorized in the country, rising from 43 percent in 2005 to 60 percent in 2014 (Social Weather Stations 2015). Since the 1990s, at least ten proposed bills for the legalisation of divorce in the Philippines have been examined by the Philippine congress<sup>2</sup>, five of which were authored by the women's party called Gabriela.

Secondly, migrant Filipinas in the Netherlands represent 67 percent of the total 20,073 Filipinos in this country (Centraal Bureau voor de Statistiek 2017), and many of them are in mixed couple. In 2006, for instance, "56 percent of the first generation Filipinas" in the Netherlands were "married", among which "80 percent with Dutch partners" (Padilla 2007: 204). These Filipino-Dutch couples "may have originated from a long-term stay" abroad, or from "shorter visits, including tourism, or even "pen pal" contacts" (van den Muijzenberg, 2003: 365). The numerical dominance of Filipino women in couple with Dutch nationals reflects the reality of the Filipino international marriage phenomenon: in 2015, 91 percent of 21,602 registered Filipino spouses and partners of foreign nationals were women (Commission on Filipinos Overseas 2016).

And thirdly, the Netherlands is one of the countries in Europe with the highest divorce rates: in 2014 alone, the Netherlands ranked eleventh among the 28 member states of the European Union in terms of the number of divorces per 1,000 inhabitants (see Eurostat 2016). This divorce phenomenon touches people from different ethnic and national backgrounds such as Filipinos: in 2016, 1,104 divorces concerned them, which was equivalent to 0.09 percent of the total number of divorces in the Netherlands (Centraal Bureau voor de Statistiek 2017). Within a span of 21 years (1996-2016), 87 percent of the total 15,605 divorces involving Filipinos concerned women (ibid.). The Netherlands is therefore a good place where to start investigating the cross-border power of the Philippine family law over the lives of its women migrant (former) citizens.

Before scrutinizing the stories of these migrants, I start by reviewing the literature on marital break-up in transnational families. I then take a look at the Philippine family law, notably concerning divorce, to provide a background for the present study, after which I describe the legal proceedings involved in the judicial recognition in the Philippines of overseas divorce. In the next section, I present the data-gathering methods I adopted and the 19 women I interviewed in different places around the Netherlands. In the results section, I examine three cases of migrant Filipinas that highlight the way the Philippine family law affect migrants' lives during and/or after divorce. Two of these women were divorced from their non-Filipino husbands; as counterpoint to their stories, I added the case of a Filipino woman who was formerly in couple with a Filipino man who had acquired Dutch nationality. By including this case of a "non-mixed" couple, the present paper sheds light on the different situations in which transnational divorces arise. In the discussion section, I reflect on the meaning of transnational divorce in order to conceptualize it: first, by highlighting its characteristics apparent in the case of migrant Filipinas; and second, by comparing it to international divorce, a widely used term in the socio-legal literature. I conclude by revisiting the hypothesis of the present study and by identifying possible research areas concerning marital break-up involving mixed couples.

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<sup>2</sup> These bills are the House Bill (HB) 6993 (1999), Senate Bill (SB) 878 (2001), SB 782 (2001), HB 4016 (2005), HB 3461 (2005), HB 1799 (2010), HB 4368 (2011), HB 4408 (2014), HB 116 (2016), and HB 2380 (2016).

### **Related studies on marital break-up in transnational families**

In the context of migration, relationship break-ups have been particularly documented in three cases: in families in which one or both partners work abroad (e.g. parental migration); in migrant and/or diasporic families; and in mixed families. These “transnational families” (Bryceson and Vuorela 2002) live either together maintaining links with the country(ies) in which they have social relations, or geographically separated from one another but keep a sense of unity across time and spaces.

In the context of the migration of one partner in a couple, conjugal dissolution during the migratory process may result from migrants’ long family separation and exposure to norms and values in their receiving society that are different from those in their country of origin. This was observed among some Mexican men with extensive migration experience in the United States and their spouses in Mexico: their “migration engenders change in social control and normative values at both the individual and community level that work to increase the risk of union dissolution” (Frank and Wildsmith 2005: 942). Pribilsky (2004), on the other hand, observes that marital break-up “cannot adequately explain how migration affects conjugal relationships” (315). His study of Ecuadorian male migrants in New York and their spouses in Ecuador demonstrates that the capacity of each partner in a couple “to accept one another and the roles each must assume” (332) makes a big difference. The absence of such capacity leads to conjugal break-up following migration. In some cases, conjugal dissolution can actually be the determining factor prompting individuals to migrate. For instance, some Salvadoran women migrated to the United States following their conjugal break-up in El Salvador (Horton 2009). Moreover, restrictive family law in the country of origin can also trigger migration like some Filipino migrant women in Hong Kong; they cannot divorce or re-marry in the Philippines due to the absence of divorce law in that country (Constable 2003). Likewise, migration can act as a surrogate for divorce for a few migrant Filipinas in France who had conflictual conjugal relations with their husbands in their country of origin (Author): for these women, migration was a chance to restart their lives in a new land.

The marital break-up of migrant and/or diasporic families has also attracted scholarly attention, notably *talaq* (repudiation by the husband) in Muslim families (e.g. Bantekas 2013; Pearl 1987; Qureshi et al. 2014). Recent studies show the legal complexity of these various forms of divorce resulting from the conflicting family laws in the country of origin and of immigration of the separating couples (see Qureshi 2017). They suggest that marriage and divorce regimes are closely related to each other, the former determining the path of the latter. Other scholarly works show variations in divorce patterns among families with migration background. For example, in their study of Turkish couples and Moroccan couples in Belgium, Eeckhaut and colleagues (2011) show that couples in which one partner was born in Belgium whereas the other (of the same ethnic background) migrated there tend to divorce more than those in which both partners were born in Belgium. They attribute this to the combination of factors such as “migration aspect” (e.g. social isolation, difficulty to find work, hardship to learn the language of the receiving country...) and “the possible cultural differences and lack of social support” (291). Likewise, Mand’s (2005) research on Sikh women’s transnational marriages and conjugal break-up demonstrates how societal norms, state policies and social networks influence their decision to separate or get divorced. She observes that given the stigma attached to divorce, most Sikh women opt for a separation that allows them to maintain their place in their natal and marital kinship networks.

Unlike those cases of marital break-ups in ethnically homogeneous families, the dissolution of mixed couples remains largely underexplored. The few available studies on this theme demonstrate how partners are caught in the web of laws, institutions and socio-cultural norms in their cross-border social spaces. For example, Sportel (2013) shows that transnational divorce

among Dutch-Moroccan and Dutch-Egyptian couples does not only concern the partners, but also their countries of origin. During the divorce process, mixed couples often interact with two legal systems (one in their country of origin and the other in their country of residence) and with intermediary structures such as embassies, public or private organisations and associations (ibid.; see also Sportel 2016). These break-ups can lead to long legal battles over the custody of children and affect the socio-economic situation, social networks and psychological well-being of the individuals concerned (Kim, 2010; Singh, 2008; Singla, 2015; Suzuki, 2003). Despite the challenges of marital break-up, migrant partners in mixed couples find ways to adjust to the differing social and legal systems in which they are enmeshed due to their marriage and migration. Kulk and de Hart (2013) observe that “rather than resisting or avoiding the law, they tried to navigate the law: they navigate between the different wishes, expectations and norms surrounding their family” (1067).

Based on the scholarly works above, conjugal dissolution in transnational families may occur before, during or after the migration process as a result of one or several of the following factors: couples’ capacity to adapt themselves to situations engendered by migration, the extent of their social support and networks, and the favourable or restrictive state policies and social norms related to migration and the family in their countries of origin and of immigration. The impact of divorce on the lives of former couples has familial, social and legal dimensions. In addition, marital break-up involving transnational families appears to take place within these families’ social spaces straddling national borders. In the particular case of mixed couples, one can therefore hypothesize that it is not only the family law in their country of residence, but also that in the country of origin of the migrant partner that shapes their divorce and post-divorce lives, creating various constraints and challenges.

### **The Philippine family law: a background**

During the Spanish colonial period (1521-1898), the *Siete Partidas* allowed only “relative divorce” (legal separation) (Jumamil 2011). Absolute divorce was authorized in 1917 by the Act No. 2710 of the American colonial administration (1898-1946), then in 1943 by the Executive Order No. 141 during the Japanese occupation of the country (1942-1945) (ibid.; see also Feliciano 1994). After the war, the Philippine government introduced a new Civil Code that abolished divorce and upheld the family as an important social institution. This is one of the guiding themes of the present constitution of the country introduced in 1987: Section 1 of Article 15 of this constitution stipulates that the Philippine State “recognizes the Filipino family as the foundation of the nation”, whereas Section 2 of the same article states that “[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State”. These principles are upheld in the country’s family law, which is pluralistic, marriage-oriented, and transnational.

The pluralistic character of the Philippines’ family law is evident in the two Codes that govern families and family-related issues: the 1987 Family Code of the Philippines (Executive Order No. 209) and the Code of Muslim Personal Laws (Presidential Decree No. 1083). The former code is designed for non-Muslim Filipinos, who represent 96 percent of the Philippine population in 2010 (National Statistics Office 2014). According to this code, marriages can be broken by voiding them (Articles 35-38), through annulment (Article 45), or via legal separation (Articles 55-67). Partners whose marriage is voided or annulled can remarry afterwards, whereas those who are legally separated cannot do so as their marital bond remains undissolved from a legal viewpoint. On the other hand, the Code of Muslim Personal Laws, notably its marriage and divorce provisions (Title 11), authorizes divorce if at least the male partner is a Muslim, provided that “the marriage [was] solemnized in accordance with Muslim law” or with the Code “in any part of the Philippines” (see Article 13). There are seven ways to divorce according to the Muslim Code: repudiation of the wife by the husband (*talaq*); vow of continence by the husband

(*ila*); injurious assimilation of the wife by the husband (*zihar*); acts of imprecation (*li'an*); redemption by the wife (*khul'*); exercise by the wife of the delegated right to repudiate (*tafwld*); or judicial decree (*faskh*) (see Article 45). Taking into account the pluralistic character of the Philippine family law, it is therefore not completely correct to say that there is no divorce in this country. The only problem is that divorce possibilities are only available to Muslim Filipinos and to those non-Muslims in couple with the former.

The other characteristic of Philippine family law is its marriage orientation. In line with the constitution of the country, the Muslim Code emphasizes that “[m]arriage is not only a civil contract but a social institution” (Article 14). Likewise, the Family Code considers “[m]arriage as a special contract of permanent union between a man and a woman” (Article 1). The adjective “permanent” in this statement implies the impossibility of dissolving marriage through divorce, which affirms marriage as “an inviolable social institution” and the “foundation of the family” (Article 1 of the constitution). As a “substitute for divorce” (Jumamil 2011: 872), voided marriage as indicated in Articles 35-38 of the Family Code provides grounds to declare a marriage as “inexistent from the beginning or void *ab initio*” (ibid.: 871). In the case of mixed couples involving a Filipino citizen and a foreigner, divorce is possible according to Article 26 of the Family Code:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

This provision specifies that the Philippine State recognizes divorces filed abroad and obtained by the foreign partner of a Filipino national. This puts in difficult situation Filipinos who are in abusive conjugal relations: they need to either wait for their foreign partner to be the one to file the divorce or to find other ways to escape their situation.

Taking this into account, it is evident that the Family Code has a transnational character. This can be attributed to Article 15 of the Civil Code of the Philippines stating that “[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad”. This *lex nationalii* rule transnationalize the Philippine family law. The importance of judicial recognition by the Philippine court of a divorce obtained abroad can be observed in the event of a remarriage. Article 13 of the Family Code requires the “previously married” partner in a couple to provide “the death certificate of the deceased spouse or *the judicial decree of the absolute divorce* [author’s emphasis], or the judicial decree of annulment or declaration of nullity of his or her previous marriage”; failure to do so will make it difficult for the partners to remarry under the Philippine law.

### **Judicial recognition of overseas divorce in the Philippines**

The recognition of an overseas divorce in the Philippines is a complex and long process, particularly if one is not aware of the requirements to fulfill and the steps to follow. Information and legal assistance offers abound on the Internet, which can be useful but also confusing to Filipino migrants. Drawing from socio-legal sources, this section synthesizes the myriad information concerning the recognition of foreign divorce decree in the country.

Any person interested in any act, event, order or decree concerning the civil status of persons, which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located. (sec. 1, Rule 108)

This section from the Philippine Rules of Court deals with “Special Proceedings” including the “Cancellation or correction of entries in the civil registry” (Rule 108). It indicates that both (former) Filipino citizens and foreigners can do apply for judicial recognition of divorce. As the Supreme Court underlines in *Fujiki vs. Marinay et al.*, “[a] foreign judgment relating to the status

of a marriage affects the civil status, condition and legal capacity of its parties” (G.R. No. 196049, 26 June 2013). In order to obtain legal recognition of one’s divorce obtained abroad, there are five major steps to pursue.

The first step is to file a petition for recognition in a Regional Trial Court (see Philippine Statistics Authority 2016), which requires the assistance of a lawyer. Once the applicant finds a lawyer in the country, (s)he must submit to him/her the following documents: (non-)marriage certificate in the Philippines<sup>3</sup>; copy of valid passport; proof of residence in the country where the divorce was pronounced (e.g. residence card); certified true copy of the divorce decree and its official English translation; certified true copy of notification of divorce (if applicable) and its official English translation; copy of divorce law in the country where the divorce took place and its official English translation; and a Special Power of Attorney (SPA) in case the applicant cannot attend court hearings (Piquero-Ballescas 2015a). All the documents obtained in other country should be authenticated or notarized (particularly the SPA) by the Philippine Embassy or Consulate based there. After the petition has been filed, the court will set the “time and place” of the hearing, “inform the persons named in the petition”, and publish its order “in a newspaper of general circulation” (see sec. 4, Rule 108). Court hearings will then take place followed by the resolution of the case.

Once the court recognizes the foreign divorce decree, the next thing to do is “to register it to the LCRO [Local Civil Registry Office] of the place of jurisdiction of the RTC which granted the petition” (Philippine Statistics Authority 2016). After this, it is important to submit a “copy of the registered court decree and certificate of finality to the LCRO where the marriage was registered for the annotation in the COM [Certificate of Marriage]” (ibid.). This is in line with Rule 108 of the Rules of Court stipulating that “a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record” (sec. 7). All the documents received—“registered court decree, certificate of finality, certificate of registration and the annotated COM” (ibid.)—should be forwarded to the Philippine Statistics Authority (PSA) for registration. This may take one to two months (see Piquero-Ballescas 2015b). Following this period, one can apply at the PSA one’s annotated COM and Advisory of Marriage. For authentication, these documents should be brought to the country’s Department of Foreign Affairs (ibid.). The cost and the duration of the procedures of judicial divorce recognition vary depending on factors such as the specifics of the case, the required documents, the number and location (in or outside of the capital) of court hearings, and so on (Piquero-Ballescas 2015a). In 2015, the cost generally starts at “150,000” pesos<sup>4</sup>, without any guarantee that the foreign divorce decree will be recognized (ibid.).

### **Methods of data gathering and sample**

The data presented in this paper emanate from a larger qualitative research project on marital break-up among migrant Filipinas divorced or undergoing divorce in selected European countries. Data gathering in the Netherlands was conducted between April and August 2016, during which I adopted a “multi-sited” ethnographic (Marcus 1995) approach combining observations, semi-structured interviews and informal conversations in various places, mostly cities.

At the beginning of my fieldwork, I found it difficult to meet Filipino women who would agree to be interviewed and entrust me with their life stories. This shows how important a united family is for Filipino migrants and how marital break-up is considered as a stigma for many of

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<sup>3</sup> If marriage abroad was not registered in the country, the person applying for judicial recognition of his/her overseas divorce shall submit a Certificate of No Marriage Record (CENOMAR) issued by the National Statistics Office (now Philippine Statistics Authority). On the contrary, applicant whose marriage was registered in the country or whose past marriage was nullified shall provide a Certificate of Marriage (CEMAR) from the same institution.

<sup>4</sup> This is equivalent to about 2,700 euros.



them. To meet potential respondents, snowballing was an effective strategy that I adopted everytime I attended the Sunday masses of Filipino migrants in Amsterdam, Utrecht and Rotterdam. To gain additional possibilities to meet respondents, I took part in events such birthday parties, Philippine Independence Day celebrations, and other gatherings of Filipino migrants. I also slept over twice in the house of one respondent who introduced me to her group of friends. Non-Governmental Organizations (NGOs) and associations founded by Filipino migrants provided me information and assistance to meet other respondents. Nonetheless, obtaining the trust of the respondents remained a long and delicate process. I always needed to assure them that their identifiable characteristics would be anonymised in the publications and presentations resulting from my study. The fact that I resided in Belgium and not in the Netherlands assured them that their stories would be kept away from the ears of their compatriots living in the same country. For some respondents, interviewing in their home and communicating with them via email also proved worthwhile strategies to obtain additional information about their present situation and lifestyle.

**Table 1.** Migrant Filipinas interviewed in the Netherlands

Pseudonym (case studies in grey)	Age	Residence duration (in years)	Place of marriage	Type of marriage	Former husband	Length of marriage (in years)
Rita	55	28	Netherlands (NI)	civil	Dutch	15
Gina	59	33	Philippines (Ph)	religious	Dutch	14
Jocelyn	49	26	Ph	civil	African	27
Teodora	60	30	Ph	religious	Dutch	26
Lila	48	23	NI & Ph	civil/religious	Dutch	12
Elisabeth	66	12	Australia	religious	Dutch	13
Liza	45	17	Ph	civil	Caribbean	13
Marta	74	51	United States	civil/religious	Dutch	30
Lyn	57	24	NI	civil	Dutch	20
Maria	44	26	NI	registered partnership/civil	Dutch	ongoing
Anja	61	26	Ph	religious	Dutch	18
Joan	55	22	Ph	religious	Dutch	16
Helen	49	29	Ph	civil	Dutch	7
Alma	48	24	Ph	religious	Dutch	21
Mina	41	22	NI	civil	Dutch	11
Darla	55	25	Ph	religious	Filipino	20
Erla	61	43	Ph	religious	Filipino	25
Elvie	69	45	NI	civil	Filipino	3
Rowena	78	45	NI	civil	Dutch	42

Aside from ethnographic observations, I conducted 32 interviews in Filipino, English and using the combination of the two languages. With the consent of the respondents, I digitally recorded my interviews with them. In this paper, I specifically draw from my interviews with 19 migrant Filipinas (see Table 1): 14 were divorced from their non-Filipino husbands (12 Dutch, 1 African, and 1 Caribbean), three were divorced from their Filipino partners, one of whom already passed away, one was undergoing divorce with her Dutch husband, and one was a widow of a Dutch national. At the time of the interviews, these respondents were 56.5 years old in average and had been residing in the Netherlands for an average of 29 years. A majority of them had arrived in the country in the 1980s and 1990s. Most of them were highly educated: two had

postgraduate education, 13 had attained graduate level, one had vocational degree, and three had secondary education. Thirteen of them were working, four were retired, and two were unemployed. They had two children in average. Except in one case in which the Dutch husband passed away, the major causes of the respondents' marital break-up were infidelity, financial problem, and lack of intimacy and communication. In many cases, it was the respondents who decided to divorce. The average duration of their marriage had been 18.5 years.

In the following sections, I detail the cases of three respondents who experienced strong transnational legal aspects of divorce. Aside from these three cases, I also draw from my interviews with other study participants to enrich my analysis. To protect the privacy of all the respondents, I modified their names and use pseudonyms in this paper.

### **Marriage “there” and its shackle “here”**

The marriages of most migrant Filipinas (except four) in this study had a transnational legal dimension, as they were registered both in the country where they had been solemnized and in the country where the couple resided thereafter. This means that in these countries migrant Filipinas possessed the same civil status, that is, married. Even in the cases of the four respondents who only registered their marriage in one country, difficulties could arise during or after the divorce process:

I was going to divorce [my Dutch husband]. I was filing the divorce, [but I found out that] I was not registered in The Hague [...] Our marriage was not actually registered. You cannot divorce [in the Netherlands] because you are not registered, not married in the first place. What can I do? (Joan, 55 years old)

The vignette above suggests that the process of marriage for mixed couples does not end after the wedding, as the partners need to register their union in in both their countries of origin. Joan was not aware of this when she got married with her Dutch boyfriend in 1994 in the Philippines in a religious ceremony (which is recognized as a civil wedding in the country, provided that the religious leader<sup>5</sup> who solemnizes it sends to the local civil registrar “triplicate copies of the [marriage] certificate not later than fifteen days” after the wedding ceremony – see Art. 23 of the Family Code). Like Joan, seven respondents got married once through a religious ceremony in the Philippines, and one tied the knot in the same way in another country (Australia, where religious marriages are legally recognized). Three other women interviewed had their marriage solemnized twice: once during a civil wedding in the Netherlands or in another country, and a second time during a religious ceremony in the Philippines or in another country. The rest of the respondents had only civil marriages, which were mostly solemnized in the Netherlands. Filipinos are supposed to register in the Philippines their marriages abroad, which most respondents in my study did: only four respondents did not declare in the Philippines their marriage abroad, and therefore remained “single” in the eyes of the law of the country.

Joan case is peculiar in that her Philippine wedding was registered in her country but not in the Netherlands: when she came to Europe in 1994 to join her Dutch husband a few months after their wedding, they did not know that they had to declare their overseas marriage in the Registry of Births, Deaths and Marriages of the Foreign Documents Department<sup>6</sup> (*Afdeling Landelijke Taken*) in The Hague. Joan only found out about this in 2004 on the day she wanted to file a divorce against her husband. At that time, she was already a Dutch citizen. To be able to divorce, she asked her sister in the Philippines to send her legal proofs of her marriage, including her birth certificate. She brought these papers to The Hague and registered there her marriage. On the

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<sup>5</sup> To solemnize a marriage, this person (e.g. priest, rabbi, imam, minister...) must be “duly authorized by his church or religious sect and registered with the civil registrar general” (see Article 7 of the Family Code).

<sup>6</sup> It is where foreign marriage certificates are registered in the Netherlands. Non-foreign ones are registered in the municipality where the marriage was solemnized.

following day, she went back there again and was finally able to file a divorce. As her husband refused to let her go, the process was long and it took ten years for her to receive the court decision. At the time of the interview, Joan told me that she had just reacquired the Filipino nationality and expressed her intention to apply in the Philippines for judicial recognition of her divorce.

Joan's case emphasizes the permanence of marriage carved in Article 1 of the Family Code of the Philippines. However, this permanence of Philippine marriages can be challenged when Filipino migrants are registered in a country where divorce is allowed. To take advantage of this, the migrant concerned with Filipino nationality need to obtain first a divorce in his/her country of residence, which must be initiated by his/her foreign partner. If (s)he is no longer Filipino citizen, (s)he can directly file the divorce by him/herself and then seek the judicial recognition of this overseas divorce from the Philippine court. Before my interview with Joan ended, she confided that she had a new Dutch partner but not yet living together. She remained in contact with her ex-husband who was still single; the two kept a friendly relation. Expressing her intention in applying soon for a judicial recognition in the Philippines of her divorce, Joan, whose civil status in the Philippines remained "married", was probably aware that if she would get married with her new partner her ex-husband could file a case of bigamy against her before a Philippine court (see for instance the case of *Fujiki vs. Marinay et al.* 2013). We see in this case how the institution of marriage and that of divorce are closely related to each other, like the two sides of one coin. Mixed couples' failure to register their marriage in the countries in which they are enmeshed can result in differing legal statuses; this also applies to divorce, as we will see in the next section.

### **Which identity? The challenges of differing civil statuses "here" and "there"**

When a divorce is not registered in the country where the marriage was originally solemnized, it may lead to challenges in the post-divorce lives of the former partners. In this study, none of the respondents sought for their divorce to be legally recognized in the Philippines, which resulted in a double civil status: divorced (or, in one case, widowed) "here" but married or single "there". These differing legal identities can create emotional as well as practical constraints, as the case below illustrates.

My passports are very ironical: Santiago [her maiden name] appears in my Dutch passport, whereas Van de Verde [the surname of her ex-husband] is in my Philippine passport. Every time I go back to the Philippines like recently, I ask myself "what will I do? Will I present my Dutch passport or my Philippine passport [to the immigration officer at the airport]?".  
(Rita, 55 years old)

The confusion that Rita experiences everytime she visits the Philippines stems from her differing civil statuses that intersect with her double nationality. This complication started after her divorce in 2007. A Dutch national since 1991, she decided to apply at the Philippine embassy to reacquire a Filipino nationality a few years after her divorce. The Philippine passport that they issued to her used the name of her Dutch ex-husband. Rita protested saying that she was already divorced from her husband, and asked the staff at the embassy if it would be possible to replace her ex-husband's name in her passport with her maiden name. The staff at the embassy told her that it would not be possible, as she is still registered as "married" in the Philippines and that there is no divorce there. This engendered problem later on when Rita and her new partner of Belgian nationality went back to the Philippines in 2014 to buy together a piece of land. Rita used her maiden name in filling up the administrative forms, but presented her Philippine passport with her ex-husband's name on it as her proof of identity. The real state agent asked her to legally justify why she was utilizing different names to buy the property, pending then the process of land purchase. Rita explained to me why she used her Philippine passport at that time:

[...] when you will buy [a property] in the Philippines, you have an advantage<sup>7</sup> if you have a Philippine passport. So if I would only use my Dutch passport, I could not avail myself of that advantage. I needed to present my Philippine passport, but that passport is Van de Verde [her ex-husband's surname].

Aside from this names issue, the real state company also questioned the legality of Rita's relationship with her Belgian partner with whom she was buying the land. To solve this problem, Rita sought the help of a lawyer and made an affidavit stating that the person in her Filipino passport and that in her Dutch passport were the same. After this, she and her partner returned to the Netherlands to obtain a certificate from their municipality stating that there were legally living in together as a couple, that is to say, they were in a "registered partnership" (*geregistreerd partnerschap*)<sup>8</sup>. This certificate, together with the affidavit, allowed Rita and her partner to finally acquire a piece of land in the Philippines.

Rita's experience underlines the importance of registering in one's country of origin the change of civil status acquired in another country – all the more so if one intends to keep social ties with one's natal country through various ways such as acquisition of properties. Rita was supposed to apply in the Philippines for judicial recognition of her divorce, but she was not able to do so due to time constraints and to her belief that the process would be long and costly.

Among my respondents, several respondents cited the same reasons as Rita for not registering their change of civil status in the Philippines, whereas others emphasized their lack of incentive to do so given that they were permanent residence in the Netherlands, their intention to focus their lives in this country, and their absence of any plan to remarry. As one respondent confided, "in my view right now, [I am for] living together not [for] getting married" (Liza, 45 years old and mother of two). Among the 16 women interviewed who were formerly in mixed couples, only one remarried in the Netherlands, but like other respondents, she did not change her married civil status in the Philippines. Only five respondents (including the three presented in this paper) reported transnational legal inconveniences during or following the rupture of their relationships: this suggests that having differing civil statuses in two countries does not always trigger legal problems in the everyday lives of Filipino migrant women. In the next section, I examine another case of a migrant Filipina that uncovers the impact of the Philippine family law on her post-divorce intimate life.

### **When the legal intersects with the religious: the difficulty to retie the knot "there"**

The cross-border power of the Philippine family law does not only create trouble for Filipinos in mixed couples: some Filipino couples also experience problems when this law intersects with the Catholic religion, making it more difficult for Filipino migrants to remarry and restart a new life.

This happened to Darla, 55 years old and mother of one. She and her Filipino partner got married religiously in the Philippines in 1991 and on the same year migrated to the Netherlands. They both worked in an NGO and pursued university studies afterwards. Darla and her husband acquired the Dutch nationality in 1996 and 1997, respectively. After that, Darla's husband found a job in a Dutch NGO that had a project in the Philippines: he went there to work for six months and spend the remaining six months of the year in the Netherlands with Darla and their child. After his contract, he worked again in another country. Years of living "together apart" created an emotional gap between them that lead to their divorce in 2011. Darla stayed in the Netherlands with her child, whereas her ex-husband renounced his Dutch nationality and decided

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<sup>7</sup> This refers to the advantage of having one's land property registered under one's own name, which is not possible for foreigners in the country.

<sup>8</sup> This partnership and marriage are the two forms of legal living arrangement among couples in the Netherlands (for details, see the website of the Government of the Netherlands at <https://www.government.nl/topics/family-law/contents/marriage-registered-partnership-and-cohabitation-agreements>).

to permanently reside in the Philippines. A few years after, Darla met via a social networking site Roman, a former school classmate in the Philippines who was informally separated from his wife. They started a long-distance relationship and planned to get married. The problem was that both of them were still considered married to their respective former spouses in the eyes of the Philippine law as well as the Catholic Church, and therefore could not get married there, neither in civil nor religious ways. To solve this problem, Darla invited Roman to follow her in the Netherlands where they could be legally in couple through a registered partnership. Being both active Christians, they were planning to tie the knot in the Filipino protestant church they frequented.

Darla's case illustrates how connected the Philippine family law is to the religious realm. In fact, the committee that revised the Civil Code of the country drew from the Catholic Canon Law, specifically regarding nullification of marriage (see Feliciano 1994). Since many Filipinos get married through a religious ceremony, which is legally recognized in the country, nullifying or voiding their marriage in the civil way does not allow them to remarry in the church after. Those who decide not to nullify or void their marriage nor legally separate with their spouses, due to its costly and long procedure, usually opt for an informal live-in arrangement with a new partner. For migrants like Darla, the only solution appears to be tying the knot with their partner in another country. In the Netherlands, for example, Darla and her partner can be legally together through registered partnership, and can also wed in a church. However, it must be noted that a religious wedding can only take place in the Netherlands after a "marriage or registered partnership ceremony has been solemnised by the registrar"<sup>9</sup>. The Dutch Civil Code "considers a marriage only in its legal civil relationships" (Article 1:30, section 2) such as civil wedding and registered partnership.

### **Discussion: conceptualizing transnational divorce**

The three cases presented here demonstrate what transnational divorce is and what characterises it. They also provide insights on how to differentiate transnational divorce from what is known as "international divorce" in the field of socio-legal studies.

What is evident from our empirical findings is that a transnational divorce is a complex process that takes place across time and national borders. It is linked to the institution of marriage "here" and "there". As a result, it does not end with the official approval of the court in one country, but may linger in time as it can be voided in other country with different legal norms concerning marriage and its dissolution. Such a divorce is not automatically determined by whether the separating couple is "mixed" or not, but rather on the secular and religious regimes governing marriage and the family in societies in which the couple is enmeshed. It is a product of these intersecting regimes whose power often transcends national borders. In other situations, it results from the interacting legal systems of two or more countries, which affirms the "extraterritorial expansion of family law" posing "new challenges" (Estin and Stark 2007: 4) to transnational families. Transnational divorce often involves many non-institutional actors beyond the couple, such as family members in the country of origin of the migrant partners (like what happened to Joan who sought assistance from her sister back home to divorce her husband in the Netherlands).

**Table 2.** Differences between transnational and international divorces

Cross-border divorces	Transnational divorce	International divorce
Identifiers		
Main actors	non-institutional and institutional	institutional
Dimensions	legal, familial, economic, social,	legal

<sup>9</sup> see the website of the Government of the Netherlands: <https://www.government.nl/topics/marriage-cohabitation-agreement-registered-partnership/question-and-answer/marriage-or-entering-into-a-registered-partnership>

	religious...	
Temporal occurrence	before, during or after the legal process of union dissolution	during the legal process
Spatial occurrence	generally outside of the institutional framework of a court	within the institutional framework of a court

Based on these characteristics, we can distinguish transnational divorce from the widely discussed “international divorce” in the socio-legal literature (e.g. Bantekas 2013; Boele-Woelki 2010; Estin 2011; Wardle 1995<sup>10</sup>). International divorce has been defined as a “situation in which the separating spouses are of different nationalities, live in different countries or live in a country of which they are not nationals” (Baarsma 2011: 13). It takes an international character during its legal process. Private international law<sup>11</sup> shapes this process, as it “decides which state’s courts have jurisdiction over a subject-matter”, “determines which law is to be applied”, and ensures “that the resulting judgment is nevertheless recognised and enforced in the other states concerned” (ibid.: 1). In other words, international divorce occurs within the institutional framework of a court, during the legal process of a union dissolution, and aside from the separating couples involves institutional legal actors such as lawyers and judges. It has an explicit legal dimension in which the family laws in the country/ries of the separating partners dynamically interact during the divorce process. Whether or not the partners involved are engaged in cross-border activities, their divorce remains “international” due to these interacting family laws “here” and/or “there” during the legal process (see Table 2).

In the present study, the migrant Filipinas interviewed had the same nationality (Dutch) as their husbands during their divorce and had followed the Dutch family law at that time given their residence in the Netherlands. Their divorce does not therefore qualify as international. A few respondents who re-acquired Filipino nationality after their divorce and/or renewed their links with their country of origin by buying a property there like Rita or trying to get married there like Darla experience the power of that country’s family law over their lives without going to a court. This implies that a divorce may become transnational when the cross-border activities of one (or both) of the ex-partners bring them in close contact with the family-related laws of another country. Nonetheless, taking into account that migrants have multi-faceted relations with their country/ries of origin (Basch et al. 1995), it is important to keep in mind that divorce involving them does not always possess cross-border legal elements, but encompasses other dimensions such as familial, social, economic, religious, and so on. Given the strong legal dimension of international divorce as gleaned in the literature, it is interesting to note that it may sometime overlap with transnational divorce, which has legal and/or non-legal aspects (see Sportel 2016; Qureshi 2017). What is certain is that both international and transnational divorces are global processes (see Table 2), and that their impact on the lives of the partners goes well beyond the legal.

## Conclusion

The case studies in this paper unveil the way the Philippine family law influences the divorce and post-divorce lives of migrant Filipinas, as evidenced by the constraints and challenges this law brings to them. The cases presented also highlight their agency, showing the way they navigate or counter the law in their country of origin.

Despite their long residence in the Netherlands and Dutch nationality, migrant Filipinas in this country often live under the engulfing power of the Philippine family law, notably when they

<sup>10</sup> see the special issue that this article introduces at volume 29 of the journal *Family Law Quarterly*: “Special Symposium on International Marriage and Divorce Regulation and Recognition” (1995).

<sup>11</sup> Cutler (1999) defines it as the “conflict or choice of law principles that determine the appropriate jurisdictional norms to apply to individual claims involving a foreign element or foreign persons” (p. 25).

break up with their partner while maintaining dynamic transnational ties with the Philippines. The constraints brought by this situation include the following: difficulties to divorce when marriage in the Philippines is not registered in the Netherlands, administrative challenges to acquire properties in the Philippines due to one's differing legal identities linked to marriage and divorce, and the impossibility of remarriage if one's legal union is not annulled nor voided in the Philippines. The latter constraint appears linked to the intersecting secular and religious regimes of marriage and the family in the Philippine context, which makes it hard for some Filipino migrants to remarry in their country of origin after their marital union breaks up. These two regimes obviously possess a cross-border character, which Filipino migrants like the women in the present study try to counter.

The findings in this paper cannot be generalised easily due to its limited sample; nevertheless, it provides in-depth insights on how a country's family law can affect the lives of its (former) citizens living in another country. These insights may serve as a starting point for further studies of transnational divorce cases involving mixed and migrant couples. Since the present study only concerns the legal aspects of transnational divorce, it calls for more research examining the other non-legal dimensions of such disunion, particularly regarding the way these dimensions interact with one another and with the law. Given the various cross-border ties of partners in mixed and migrant couples, it is important to take into account their "transnational social space" (Faist 2004) when studying their divorce and the way the different legal norms in these spaces intersect in their lives. This means considering the family laws in both the country of origin and country of residence of mixed couples, their interactions, contradictions and convergences. A cross-country or cross-group study employing mixed methods approach will be useful in this regard, as they can provide large data sets from which we can observe general patterns at the macro level. Such study will open up new research paths that will shed light on the global transformation of the way people view intimacy and family life.

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